

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JUDITH RÉ,)	Civil Action No. 04-11385-RGS
Plaintiff,)	
v.)	
JODI R.R. SMITH, AND)	
BARNES & NOBLE, INC.,)	
Defendants.)	

**DEFENDANTS' EMERGENCY MOTION TO
AMEND THE MOTION AND TRIAL SCHEDULE**

Defendants Barnes & Noble, Inc. ("B&N") and Jodi R. R. Smith (collectively, "Defendants"), by there undersigned counsel, hereby respectfully make this emergency motion to enlarge the deadline for the filing of Fed. R. Civ. P. Rule 56 motions and to amend the Order Setting Case for Trial (the "Scheduling Order"), which was entered on August 10, 2004, to continue the dates for pre-trial filings, final pre-trial conference and trial. In support of their motion, Defendants state as follows:

1. On August 10, 2004, the Court ordered that all summary judgment motions be filed in this action by November 10, 2004.
2. In addition, the Scheduling Order presently requires parties to make various pre-trial filings by December 7, 2004, to appear for the final pre-trial conference on December 9, 2004, and to commence trial, if any, on December 13, 2004.
3. Defendants intend to file a summary judgment motion in this action. However, the deposition of B&N is scheduled to take place on November 9, 2004, thus giving Defendants insufficient time following the completion of that deposition to receive and review the deposition transcript before having to file their summary judgment motion.

4. While the B&N deposition was originally noticed for October 26, 2004, the parties initially could not agree on the location for the deposition. Plaintiff's attorneys insisted on taking the deposition in Boston, notwithstanding the presumption that depositions of a corporation's officers and agents should be held at the corporation's principal place of business (in this case New York), and because the location selected was unnecessarily burdensome for the witness and would result in costs that B&N should not have had to incur.

5. On the day that B&N filed a motion for a protective order, Plaintiff's counsel agreed to take the deposition in New York. By that time, the only convenient date for the B&N deposition was November 9, one day before the summary judgment motion is due.

6. Accordingly, Defendants seek an order enlarging the date by which they are required to move for summary judgment to, and including, November 24, 2004, which will give Defendants sufficient time following the last deposition to prepare their summary judgment motion papers.

7. It stands to reason that the December 7, 2004 date by which pre-trial filings need to be made, the December 9, 2004 final pre-trial conference date and the December 13, 2004 trial date should be continued. It would be a waste of the parties' and the Court's resources to prepare for and, potentially, conduct a trial while a dispositive summary judgment motion was pending *sub judice*.

8. Additionally, Erik Kahn, the lead partner on this matter for Defendants, developed a conflict with the present trial schedule subsequent to the formulation of the schedule.

9. Accordingly, Defendants seek an order continuing the dates for pre-trial filings, the final pre-trial conference and trial to dates several weeks subsequent to the date by which the Court anticipates rendering a decision on the summary judgment motion.

10. Defendants make this motion on an emergency basis in light of the imminence of the deadline for filing summary judgment motions on November 10, 2004.

WHEREFORE, Defendants respectfully request that the Court enter an order enlarging the time to file summary judgment motions until November 24, 2004 and continuing the pre-trial filing, the pre-trial conference and trial dates until some sufficient period of time, in the Court's discretion, after the resolution of all dispositive motions.

Dated: November 2, 2004

DEFENDANTS JODI R. R. SMITH and
BARNES & NOBLE, INC.

By their attorneys,

\s\ Jeffrey E. Francis

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LOCAL RULE 7.1 CERTIFICATION

On October 22, 2004 and again on November 2, 2004, counsel for Defendants conferred with counsel for Plaintiff concerning amending the motion schedule and the Scheduling Order. Counsel for Plaintiff stated that they would not assent to the motion. Accordingly, this motion is necessary for Defendants to obtain the requested relief.

\s\Kira Watson

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